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met; and

- (c) not allow telecommuting employees to violate overtime rules.

R477-8-4. Lunch and Break Periods.

- (1) Management may require a minimum of 30 minutes noncompensated lunch period.
- (2) An employee may take a 15 minute compensated break period for every four hours worked.
- (3) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

R477-8-5. Overtime.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

- (1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:
 - (a) prior supervisory approval for all overtime worked;
 - (b) recordkeeping guidelines for all overtime worked;
 - (c) verification that there are sufficient funds in the budget to compensate for overtime worked.
- (2) Overtime compensation standards are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.
 - (a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals must be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63, Chapter 46b may not be applied for FLSA appeals purposes.
- (3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.
 - (a) An FLSA nonexempt employee shall sign a prior overtime agreement

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authorizing management to compensate the employee for overtime worked by actual payment or time off at time and one half.

- (b) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.
- (4) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.
 - (a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.
 - (b) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.
 - (c) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:
 - (i) at the end of the employee's established overtime year;
 - (ii) upon assignment to another agency; or
 - (iii) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.
 - (d) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.

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- (e) The agency head may approve overtime for career service exempt deputy and division directors, but overtime [shall] may not be compensated with actual payment. Schedule AB employees [shall] may not be compensated for compensatory time except with time off.

(5) Law enforcement, correctional and fire protection employees

- (a) To be considered for overtime compensation under this rule, a law enforcement or correctional officer must meet the following criteria:
 - (i) be a uniformed or plainclothes sworn officer;
 - (ii) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes;
 - (iii) have the power to arrest;
 - (iv) be POST certified or scheduled for POST training; and
 - (v) perform over 80 percent law enforcement duties.
- (b) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.
 - (i) 171 hours in a work period of 28 consecutive days; or
 - (ii) 86 hours in a work period of 14 consecutive days.
- (c) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.
 - (i) 212 hours in a work period of 28 consecutive days; or
 - (ii) 106 hours in a work period of 14 consecutive days.
- (d) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:
 - (i) the Fair Labor Standards Act, Section 207(k);
 - (ii) 29 CFR 553.230;
 - (iii) the state's payroll period;

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(iv) the approval of the Executive Director, DHRM.

(6) Compensatory Time

- (a) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.
- (b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero in the same pay period that the employee is transferred from one agency to a different agency, promoted, reclassified, reassigned, or transferred to an FLSA exempt position. The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.

(7) Time Reporting

- (a) Employees shall complete and sign a state approved biweekly time record that accurately reflects the hours actually worked, including:
 - (i) approved and unapproved overtime;
 - (ii) on-call time;
 - (iii) stand-by time;
 - (iv) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and
 - (v) approved leave time.
- (b) An employee who fails to accurately record time may be disciplined.
- (c) Time records developed by the agency shall have the same elements as the state approved time record and be approved by the Department of Administrative Services, Division of Finance.
- (d) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record shall be disciplined.
- (e) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, or designee, of the Department of Human Resource Management.

- (8) Hours Worked: An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

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- (a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.
 - (b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:
 - (i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;
 - (ii) the employee is completely relieved from duty and allowed to leave the job;
 - (iii) the employee is relieved until a definite specified time;
 - (iv) the relief period is long enough for the employee to use as the employee sees fit.
 - (c) On-call time: An employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call.
 - (i) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty.
 - (ii) An employee must be directed by his supervisor, either verbally or in writing, that he is on call for a specified time period. Carrying a pager or cell phone shall not constitute on-call time without a specific directive from a supervisor.
 - (iii) The employee shall record the hours spent in on-call status on his time sheet in order to be paid.
 - (d) Stand-by time: An employee restricted to stand-by at a specified location ready for work must be paid full-time or overtime, as appropriate. An employee must be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.
 - (e) The meal periods of guards, police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours must be counted as working time, unless an express agreement excludes the time.
- (9) Commuting and Travel Time for FLSA exempt and nonexempt employees:

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- (a) Normal commuting time from home to work and back may not count towards hours worked.
 - (b) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.
 - (c) Time an employee spends traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.
 - (d) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.
 - (e) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.
- (10) Excess Hours for FLSA exempt and nonexempt employees: An employee may use excess hours the same way as annual leave.
- (a) Agency management shall approve excess hours before the work is performed.
 - (b) Agency management may deny the use of any leave time, other than holiday leave, that results in an employee accruing excess hours.
 - (c) An employee may not accumulate more than 80 excess hours.
 - (d) Agency management may pay out excess hours under one of the following:
 - (i) paid off automatically in the same pay period accrued;
 - (ii) paid off at any time during the year as determined appropriate by a state agency or division;
 - (iii) all hours accrued above the limit set by DHRM
 - (iv) upon request of the employee and approval by the agency head; or
 - (v) upon assignment from one agency to another.

R477-8-6. Dual State Employment.

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

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- (1) An employee may work in up to four different positions in state government.
- (2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.
- (3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.
- (4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.
- (5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.
- (6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.
- (7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.
- (8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.
- (9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions under Subsection R477-9-2(1).

R477-8-7. Reasonable Accommodation.

Reasonable accommodation for qualified individuals with disabilities may be a factor in any employment action. Before notifying an employee of denial of reasonable accommodation, the agency shall consult with the Division of Risk Management.

R477-8-8. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

- (1) return to work from injury or illness;
- (2) when management determines that there is a direct threat to the health or safety of self or others;